



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0745]

RIN 1625-AA00

### Safety Zone; Potomac River, Between Charles County, MD and King George County, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule; request for comments.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain waters of the Potomac River. This action is necessary to provide for the safety of persons, and the marine environment from the potential safety hazards associated with construction operations at the new Governor Harry W. Nice / Senator Thomas "Mac" Middleton Memorial (US-301) Bridge, which will occur from 7 a.m. on September 20, 2021, through 8 p.m. on December 31, 2021. This rule will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Sector Maryland-National Capital Region or a designated representative. Due to the lengthy duration of the safety zone, the Coast Guard is accepting and reviewing public comments until October 15, 2021. While the rule is being enforced, beginning September 20, 2021, the Coast Guard reserves the right to modify the safety zone if an issue is raised by the public comments that requires a modification.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2021. For the purposes of enforcement, actual notice will be issued from September 20, 2021, until

[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related materials will be accepted and reviewed by the Coast Guard until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit comments and material online at <https://www.regulations.gov> (see Section II of SUPPLEMENTARY INFORMATION for additional details). To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0745 in the “SEARCH” box and click “SEARCH.” Click on DOCUMENTS on the line associated with this rule below “SEARCH”.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Samuel Danus, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410-576-2519, email [Samuel.M.Danus@uscg.mil](mailto:Samuel.M.Danus@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b><i>Federal Register</i></b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided.

#### *1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and

provide a reason for each suggestion or recommendation. You may submit your comments and material online at <https://www.regulations.gov> by typing the docket number in the “SEARCH” box and click “SEARCH.” Click on “Submit a Comment” on the line associated with this rulemaking.

## *2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

### **III. Background Information and Regulatory History**

On August 23, 2021, the Coast Guard established a temporary safety zone for certain waters of the Potomac River in association with the construction operations at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge (86 FR 46970; Docket No. USCG-2021-0650). That rule had an effective date of 7 a.m. on August 23, 2021, through 8 p.m. on September 11, 2021.

On September 10, 2021, Skanska-Corman-McLean, Joint Venture, notified the Coast Guard that the company will continue to set 200-ton pre-cast fender ring elements at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge at Piers 43 and 44, which are adjacent on either side of the federal navigation channel from September 13, 2021, through December 31, 2021. The operation requires the daily movement in, anchoring, and movement out of a large crane, as well as nighttime diver work. This operation will impede vessels requiring the use of the channel. The U.S. Coast Guard established a temporary safety zone for certain waters of the Potomac River in association with the construction operations at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge (Docket No. USCG-2021-0127) from 7 a.m. on September 13, 2021, to 8 p.m. on September 18,

2021. The U.S. Coast Guard issued a temporary rule (Docket No. USCG-2021-0127) for only a six calendar day period due to the timing when the notification was received by the company. Additional rulemaking is needed to cover the entire period of work provided by the company.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. Construction operations involving crane heavy lifts at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge must occur within the federal navigation channel. Immediate action is needed to respond to the potential safety hazards associated with bridge construction. Hazards from the construction operations include low-hanging or falling ropes, cables, large piles and cement cast portions, dangerous projectiles, and or other debris. We must establish this safety zone by September 20, 2021, to guard against these hazards and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule..

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the ***Federal Register***. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge conducted within the federal navigation channel.

#### IV. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with bridge construction starting September 20, 2021 will be a safety concern for anyone within the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge construction site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being constructed.

#### V. Discussion of the Rule

This rule establishes a temporary safety zone September 20, 2021, until December 31, 2021. The zone will be enforced as follows:

<b>Date(s):</b>	<b>Hours:</b>
September 20, 2021 through September 24, 2021	7 a.m. September 20, 2021 through 8 p.m. September 24, 2021
September 25, 2021 through October 16, 2021	Monday through Saturday, 7 a.m. to 8 p.m.
October 18, 2021 through October 22, 2021	7 a.m. October 18, 2021 through 8 p.m. October 22, 2021.
October 23, 2021 through December 31, 2021, except November 25, 2021 and December 25, 2021	Monday through Saturday, 7 a.m. to 8 p.m.

The safety zone will cover all navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'50.96" N, 076°59'22.04" W, thence south to 38°21'43.08" N, 076°59'20.55" W, thence west to 38°21'41.00" N, 076°59'34.90" W, thence north to 38°21'48.90" N, 076°59'36.80" W, and east back to the beginning point, located between Charles County, MD and King George County, VA. The temporary safety zone is approximately 450 yards in width and 270 yards in length.

This regulation requires that the bridge owner post a sign facing the northern and southern approaches of the navigation channel labeled "BRIDGE WORK—DANGER—STAY AWAY" affixed to the sides of the on-scene marine equipment and vessels operating within the area of the safety zone Marine equipment means any vessel, barge

or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors. This notice will consist of a diamond shaped sign (minimum 4 feet by 4 feet) with a 3-inch orange retro reflective border. The word "DANGER" will be 10 inch black block letters centered on the sign with the words "BRIDGE WORK" and "STAY AWAY" in 6 inch black block letters placed above and below the word "DANGER," respectively, on a white background.

The duration of the zone is intended to protect personnel, and the marine environment in these navigable waters while the tub sections are being set at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge at Piers 43 and 44, which are adjacent on either side of the federal navigation channel. Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone. To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a).

## **VI. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size and duration of the safety zone. The temporary safety zone is approximately 450 yards in width and 270 yards in length. We anticipate that there will be no vessels that are unable to conduct business. Excursion vessels and commercial fishing vessels are not impacted by this rulemaking. Excursion vessels do not operate in this area, and commercial fishing vessels are not impacted because of their draft. Some towing vessels may be impacted. But, bridge project personnel have been conducting outreach throughout the project in order to coordinate with those vessels. Vessel traffic not required to use the navigation channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the east of the federal navigation channel, as similar vertical clearance and water depth exist under the next bridge span to the east. This safety zone will impact a small designated area of the Potomac River for 87 days but coincides with the non-peak season for recreational boating.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section VI.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism,



if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 6 total days that will prohibit entry within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) of

Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T05-0745 to read as follows:

**§ 165.T05-0745 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'50.96" N, 076°59'22.04" W, thence south to 38°21'43.08" N, 076°59'20.55" W, thence west to 38°21'41.00" N, 076°59'34.90" W, thence north to 38°21'48.90" N, 076°59'36.80" W, and east back to the beginning point, located between Charles County, MD and King George County, VA. These coordinates are based on datum NAD 83.

(b) *Definitions.* As used in this section---

*Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

*Marine equipment* means any vessel, barge or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This safety zone will be enforced during the period described in paragraph (f) of this section. A "BRIDGE WORK—DANGER—STAY AWAY" sign facing the northern and southern approaches of the navigation channel will be posted on the sides of the marine equipment on-scene within the location described in paragraph (a) of this section.

(f) *Effective period.* This section is effective from 7 a.m. to 8 p.m. on Monday through Saturday from September 20, 2021, through December 31, 2021.

(g) *Enforcement period.* (1) The section will be enforced during the following periods: from 7 a.m. September 20, 2021, through 8 p.m. September 24, 2021; from 7 a.m. October 18, 2021 through 8 p.m. October 22, 2021; from 7 a.m. to 8 p.m. on September 25, 2021, September 27, 2021, September 28, 2021, September 29, 2021, September 30, 2021, October 1, 2021, October 2, 2021, October 4, 2021, October 5, 2021, October 6, 2021, October 7, 2021, October 8, 2021, October 9, 2021, October 11, 2021, October 12, 2021, October 13, 2021, October 14, 2021, October 15, 2021, October 16, 2021, October 23, 2021, October 25, 2021, October 26, 2021, October 27, 2021, October 28, 2021, October 29, 2021, October 30, 2021, November 1, 2021, November 2, 2021, November 3, 2021, November 4, 2021 November 5, 2021, November 6, 2021, November 8, 2021, November 9, 2021, November 10, 2021, November 11, 2021, November 12, 2021, November 13, 2021, November 15, 2021, November 16, 2021, November 17, 2021, November 18, 2021, November 19, 2021, November 20, 2021, November 22, 2021, November 23, 2021, November 24, 2021, November 26, 2021, November 27, 2021, November 29, 2021, November 30, 2021, December 1, 2021, December 2, 2021, December 3, 2021, December 4, 2021 December 6, 2021, December, 7, 2021, December 8, 2021, December 9, 2021, December 10, 2021, December 11, 2021, December 13, 2021, December 14, 2021, December 15, 2021, December 16, 2021, December 17, 2021, December 18, 2021, December 20, 2021, December 21, 2021, December 22, 2021, December 23, 2021, December 24, 2021, December 27, 2021, December 28, 2021 December 29, 2021, December 30, 2021 and December 31, 2021.

Dated: September 17, 2021.

David E. O'Connell,  
Commander, U.S. Coast Guard,  
Captain of the Port Sector Maryland-National Capital Region.